

AMENDED IN ASSEMBLY APRIL 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2346

Introduced by Assembly Member Gonzalez

February 21, 2014

An act to ~~amend Sections 2746.51, 2836.1, and 3516 of~~ *add Article 15.1 (commencing with Section 2372) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as amended, Gonzalez. ~~Nurse practitioners, certified nurse-midwives, and physician assistants: supervision. Physician and surgeon assistance program.~~

Existing law, the Attorney Diversion and Assistance Act requires the establishment and administration of an Attorney Diversion and Assistance Program to provide services for the treatment and recovery of attorneys for the abuse of drugs or alcohol or mental illness, and who may be enrolled as inactive members of the State Bar.

This bill would authorize establishment of a similar assistance program for physicians and surgeons. The bill would authorize the Medical Board of California to make available the means to rehabilitate a physician and surgeon with impairment due to abuse of dangerous drugs or alcohol, or mental or physical illness, that affects his or her competency so that a physician and surgeon may be treated in a manner that will not endanger the public health and safety. The bill would make participants in the program responsible for all expenses relating to treatment and recovery, and would authorize the board to charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program. The bill would require the board,

if the program is established, to engage in outreach to make physicians and surgeons and others aware of the existence and availability of the program.

~~Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing. Existing law authorizes a nurse practitioner and a certified nurse-midwife to furnish or order drugs or devices under specified circumstances subject to physician and surgeon supervision. Existing law prohibits a physician and surgeon from supervising more than 4 nurse practitioners and certified nurse-midwives at one time for purposes of furnishing drugs or devices. A violation of the Nursing Practice Act is a crime.~~

~~This bill would prohibit a physician and surgeon from supervising more than 6 nurse practitioners and certified nurse-midwives at one time for purposes of furnishing drugs or devices.~~

~~The Physician Assistant Practice Act provides for the licensure and regulation of physician assistants by the Physician Assistant Board within the jurisdiction of the Medical Board of California. Existing law authorizes a physician assistant to perform certain health care activities subject to physician and surgeon supervision. Existing law prohibits a physician and surgeon from supervising more than 4 physician assistants at one time, except as specified.~~

~~This bill would prohibit a physician and surgeon from supervising more than 6 physician assistants at one time, except as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 15.1 (commencing with Section 2372) is*
2 *added to Chapter 5 of Division 2 of the Business and Professions*
3 *Code, to read:*

4
5 *Article 15.1. Physician and Surgeon Assistance Program*
6

7 2372. *The board is authorized to establish a program as a*
8 *voluntary and confidential program to support a physician and*
9 *surgeon in his or her rehabilitation and competent practice of*
10 *medicine, enhance public protection, and maintain the integrity*
11 *of the medical profession. Confidentiality pursuant to this article*

1 *shall be absolute unless waived by a physician and surgeon, except*
2 *as specified in Section 2373. The program shall, if established,*
3 *aid a physician and surgeon struggling with substance abuse,*
4 *mental health concerns, stress, burnout, and other issues impacting*
5 *his or her productivity. This program shall be modeled after the*
6 *State Bar's Lawyer Assistance Program.*

7 2373. *The board may refer a physician and surgeon to the*
8 *program, but neither acceptance into or participation in the*
9 *program shall relieve the physician or surgeon of any lawful duties*
10 *and obligations under this chapter or otherwise under any*
11 *disciplinary action. Participation in the program shall be disclosed*
12 *if required as a condition of probation, pursuant to Section 2228.*

13 2374. *Participants in the program shall be responsible for all*
14 *expenses relating to treatment and recovery. In addition, the board*
15 *may charge a reasonable administrative fee to participants for the*
16 *purpose of offsetting the costs of maintaining the program.*

17 2375. *If a program is established, the board shall actively*
18 *engage in outreach activities to make physicians and surgeons,*
19 *the medical community, and the general public aware of the*
20 *existence and availability of the program. Outreach may include,*
21 *but not be limited to, the development and certification of minimum*
22 *continuing education courses relating to the prevention, detection,*
23 *and treatment of substance abuse, including no-cost and low-cost*
24 *programs and materials.*

25 ~~SECTION 1. Section 2746.51 of the Business and Professions~~
26 ~~Code is amended to read:~~

27 ~~2746.51. (a) Neither this chapter nor any other provision of~~
28 ~~law shall be construed to prohibit a certified nurse-midwife from~~
29 ~~furnishing or ordering drugs or devices, including controlled~~
30 ~~substances classified in Schedule II, III, IV, or V under the~~
31 ~~California Uniform Controlled Substances Act (Division 10~~
32 ~~(commencing with Section 11000) of the Health and Safety Code);~~
33 ~~when all of the following apply:~~

34 ~~(1) The drugs or devices are furnished or ordered incidentally~~
35 ~~to the provision of any of the following:~~

36 ~~(A) Family planning services, as defined in Section 14503 of~~
37 ~~the Welfare and Institutions Code.~~

38 ~~(B) Routine health care or perinatal care, as defined in~~
39 ~~subdivision (d) of Section 123485 of the Health and Safety Code.~~

~~(C) Care rendered, consistent with the certified nurse-midwife's educational preparation or for which clinical competency has been established and maintained, to persons within a facility specified in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the Health and Safety Code, a clinic as specified in Section 1204 of the Health and Safety Code, a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a licensed alternative birth center as defined in Section 1204.3 of the Health and Safety Code, or a special hospital specified as a maternity hospital in subdivision (f) of Section 1250 of the Health and Safety Code.~~

~~(2) The drugs or devices are furnished or ordered by a certified nurse-midwife in accordance with standardized procedures or protocols. For purposes of this section, standardized procedure means a document, including protocols, developed and approved by the supervising physician and surgeon, the certified nurse-midwife, and the facility administrator or his or her designee. The standardized procedure covering the furnishing or ordering of drugs or devices shall specify all of the following:~~

~~(A) Which certified nurse-midwife may furnish or order drugs or devices.~~

~~(B) Which drugs or devices may be furnished or ordered and under what circumstances.~~

~~(C) The extent of physician and surgeon supervision.~~

~~(D) The method of periodic review of the certified nurse-midwife's competence, including peer review, and review of the provisions of the standardized procedure.~~

~~(3) If Schedule II or III controlled substances, as defined in Sections 11055 and 11056 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician and surgeon. For Schedule II controlled substance protocols, the provision for furnishing the Schedule II controlled substance shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.~~

~~(4) The furnishing or ordering of drugs or devices by a certified nurse-midwife occurs under physician and surgeon supervision. For purposes of this section, a physician and surgeon shall not~~

1 ~~supervise more than six certified nurse-midwives at one time.~~
2 ~~Physician and surgeon supervision shall not be construed to require~~
3 ~~the physical presence of the physician, but does include all of the~~
4 ~~following:~~

5 ~~(A) Collaboration on the development of the standardized~~
6 ~~procedure or protocol.~~

7 ~~(B) Approval of the standardized procedure or protocol.~~

8 ~~(C) Availability by telephonic contact at the time of patient~~
9 ~~examination by the certified nurse-midwife.~~

10 ~~(b) (1) The furnishing or ordering of drugs or devices by a~~
11 ~~certified nurse-midwife is conditional on the issuance by the board~~
12 ~~of a number to the applicant who has successfully completed the~~
13 ~~requirements of paragraph (2). The number shall be included on~~
14 ~~all transmittals of orders for drugs or devices by the certified~~
15 ~~nurse-midwife. The board shall maintain a list of the certified~~
16 ~~nurse-midwives that it has certified pursuant to this paragraph and~~
17 ~~the number it has issued to each one. The board shall make the list~~
18 ~~available to the California State Board of Pharmacy upon its~~
19 ~~request. Every certified nurse-midwife who is authorized pursuant~~
20 ~~to this section to furnish or issue a drug order for a controlled~~
21 ~~substance shall register with the United States Drug Enforcement~~
22 ~~Administration.~~

23 ~~(2) The board has certified in accordance with paragraph (1)~~
24 ~~that the certified nurse-midwife has satisfactorily completed a~~
25 ~~course in pharmacology covering the drugs or devices to be~~
26 ~~furnished or ordered under this section. The board shall establish~~
27 ~~the requirements for satisfactory completion of this paragraph.~~

28 ~~(3) A physician and surgeon may determine the extent of~~
29 ~~supervision necessary pursuant to this section in the furnishing or~~
30 ~~ordering of drugs and devices.~~

31 ~~(4) A copy of the standardized procedure or protocol relating~~
32 ~~to the furnishing or ordering of controlled substances by a certified~~
33 ~~nurse-midwife shall be provided upon request to any licensed~~
34 ~~pharmacist who is uncertain of the authority of the certified~~
35 ~~nurse-midwife to perform these functions.~~

36 ~~(5) Certified nurse-midwives who are certified by the board and~~
37 ~~hold an active furnishing number, who are currently authorized~~
38 ~~through standardized procedures or protocols to furnish Schedule~~
39 ~~II controlled substances, and who are registered with the United~~
40 ~~States Drug Enforcement Administration shall provide~~

1 ~~documentation of continuing education specific to the use of~~
2 ~~Schedule II controlled substances in settings other than a hospital~~
3 ~~based on standards developed by the board.~~

4 ~~(e) Drugs or devices furnished or ordered by a certified~~
5 ~~nurse-midwife may include Schedule II controlled substances~~
6 ~~under the California Uniform Controlled Substances Act (Division~~
7 ~~10 (commencing with Section 11000) of the Health and Safety~~
8 ~~Code) under the following conditions:~~

9 ~~(1) The drugs and devices are furnished or ordered in accordance~~
10 ~~with requirements referenced in paragraphs (2) to (4), inclusive,~~
11 ~~of subdivision (a) and in paragraphs (1) to (3), inclusive, of~~
12 ~~subdivision (b).~~

13 ~~(2) When Schedule II controlled substances, as defined in~~
14 ~~Section 11055 of the Health and Safety Code, are furnished or~~
15 ~~ordered by a certified nurse-midwife, the controlled substances~~
16 ~~shall be furnished or ordered in accordance with a patient-specific~~
17 ~~protocol approved by the treating or supervising physician and~~
18 ~~surgeon.~~

19 ~~(d) Furnishing of drugs or devices by a certified nurse-midwife~~
20 ~~means the act of making a pharmaceutical agent or agents available~~
21 ~~to the patient in strict accordance with a standardized procedure~~
22 ~~or protocol. Use of the term “furnishing” in this section shall~~
23 ~~include the following:~~

24 ~~(1) The ordering of a drug or device in accordance with the~~
25 ~~standardized procedure or protocol.~~

26 ~~(2) Transmitting an order of a supervising physician and~~
27 ~~surgeon.~~

28 ~~(e) “Drug order” or “order” for purposes of this section means~~
29 ~~an order for medication or for a drug or device that is dispensed~~
30 ~~to or for an ultimate user, issued by a certified nurse-midwife as~~
31 ~~an individual practitioner, within the meaning of Section 1306.03~~
32 ~~of Title 21 of the Code of Federal Regulations. Notwithstanding~~
33 ~~any other provision of law, (1) a drug order issued pursuant to this~~
34 ~~section shall be treated in the same manner as a prescription of the~~
35 ~~supervising physician; (2) all references to “prescription” in this~~
36 ~~code and the Health and Safety Code shall include drug orders~~
37 ~~issued by certified nurse-midwives; and (3) the signature of a~~
38 ~~certified nurse-midwife on a drug order issued in accordance with~~
39 ~~this section shall be deemed to be the signature of a prescriber for~~
40 ~~purposes of this code and the Health and Safety Code.~~

1 ~~SEC. 2.— Section 2836.1 of the Business and Professions Code is~~
2 ~~amended to read:~~

3 ~~2836.1.— Neither this chapter nor any other provision of law~~
4 ~~shall be construed to prohibit a nurse practitioner from furnishing~~
5 ~~or ordering drugs or devices when all of the following apply:~~

6 ~~(a) The drugs or devices are furnished or ordered by a nurse~~
7 ~~practitioner in accordance with standardized procedures or~~
8 ~~protocols developed by the nurse practitioner and the supervising~~
9 ~~physician and surgeon when the drugs or devices furnished or~~
10 ~~ordered are consistent with the practitioner's educational~~
11 ~~preparation or for which clinical competency has been established~~
12 ~~and maintained.~~

13 ~~(b) The nurse practitioner is functioning pursuant to standardized~~
14 ~~procedure, as defined by Section 2725, or protocol. The~~
15 ~~standardized procedure or protocol shall be developed and~~
16 ~~approved by the supervising physician and surgeon, the nurse~~
17 ~~practitioner, and the facility administrator or the designee.~~

18 ~~(c) (1) The standardized procedure or protocol covering the~~
19 ~~furnishing of drugs or devices shall specify which nurse~~
20 ~~practitioners may furnish or order drugs or devices, which drugs~~
21 ~~or devices may be furnished or ordered, under what circumstances,~~
22 ~~the extent of physician and surgeon supervision, the method of~~
23 ~~periodic review of the nurse practitioner's competence, including~~
24 ~~peer review, and review of the provisions of the standardized~~
25 ~~procedure.~~

26 ~~(2) In addition to the requirements in paragraph (1), for Schedule~~
27 ~~H controlled substance protocols, the provision for furnishing~~
28 ~~Schedule H controlled substances shall address the diagnosis of~~
29 ~~the illness, injury, or condition for which the Schedule H controlled~~
30 ~~substance is to be furnished.~~

31 ~~(d) The furnishing or ordering of drugs or devices by a nurse~~
32 ~~practitioner occurs under physician and surgeon supervision.~~
33 ~~Physician and surgeon supervision shall not be construed to require~~
34 ~~the physical presence of the physician, but does include (1)~~
35 ~~collaboration on the development of the standardized procedure,~~
36 ~~(2) approval of the standardized procedure, and (3) availability by~~
37 ~~telephonic contact at the time of patient examination by the nurse~~
38 ~~practitioner.~~

39 ~~(e) For purposes of this section, a physician and surgeon shall~~
40 ~~not supervise more than six nurse practitioners at one time.~~

~~(f) (1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.~~

~~(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.~~

~~(g) (1) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed a course in pharmacology covering the drugs or devices to be furnished or ordered under this section.~~

~~(2) A physician and surgeon may determine the extent of supervision necessary pursuant to this section in the furnishing or ordering of drugs and devices.~~

~~(3) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.~~

~~(h) Use of the term "furnishing" in this section, in health facilities defined in Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.~~

~~(i) "Drug order" or "order" for purposes of this section means an order for medication which is dispensed to or for an ultimate~~

1 user, issued by a nurse practitioner as an individual practitioner,
2 within the meaning of Section 1306.03 of Title 21 of the Code of
3 Federal Regulations. Notwithstanding any other provision of law,
4 (1) a drug order issued pursuant to this section shall be treated in
5 the same manner as a prescription of the supervising physician;
6 (2) all references to “prescription” in this code and the Health and
7 Safety Code shall include drug orders issued by nurse practitioners;
8 and (3) the signature of a nurse practitioner on a drug order issued
9 in accordance with this section shall be deemed to be the signature
10 of a prescriber for purposes of this code and the Health and Safety
11 Code.

12 SEC. 3. ~~Section 3516 of the Business and Professions Code is~~
13 ~~amended to read:~~

14 3516. — (a) ~~Notwithstanding any other provision of law, a~~
15 ~~physician assistant licensed by the board shall be eligible for~~
16 ~~employment or supervision by any physician and surgeon who is~~
17 ~~not subject to a disciplinary condition imposed by the Medical~~
18 ~~Board of California prohibiting that employment or supervision.~~

19 (b) ~~A physician and surgeon shall not supervise more than six~~
20 ~~physician assistants at one time, except as provided in Section~~
21 ~~3502.5.~~

22 (c) ~~The Medical Board of California may restrict a physician~~
23 ~~and surgeon to supervising specific types of physician assistants~~
24 ~~including, but not limited to, restricting a physician and surgeon~~
25 ~~from supervising physician assistants outside of the field of~~
26 ~~specialty of the physician and surgeon.~~